

FCC Deference as an Artful Dodge. Particularly disturbing during this comment and reply period is the lack of stated industry knowledge of the process by which the U.S. Army Corps of Engineers and other federal Agencies issues permits under EAs or EISs which—presumably—are used as the justification for an industry Applicant’s self-certification on various FCC forms. *See, e.g.* 33 C.F.R. § 230 (1990).

Frankly, PEER fully expected some industry party to file a sample of the documentation it ordinarily uses when subscribing to such self-certification. That no party thought to do as much may be as damning an indictment of the FCC’s environmental rules as any finely crafted legal argument, or politely-mailed exhibit from the U.S. Virgin Islands. PEER assumes, and asks for argument to the contrary, that what is happening is a mere “rubber stamping”. All parties to a transaction, regulator and regulatee, are assuming that some other federal Agency has completed the proper environmental review, and the self-certification is merely the instrument through which this assumption is recorded for the public record. If this is not the case, include in the *Notice of Proposed Rule Making* answering the *PEER Petition* an item asking for comment on the feasibility of submitting Section 230 documentation with applications for Submarine Cable Landing Licenses and Section 214 Authority exercise.

However, despite the fact that NEPA requires that federal Agencies actively consult with other agencies whose areas of expertise is superior to their own, “this should not be understood as allowing [the federal Agency] to base their determination solely on the comments of other agencies. Perhaps the most basic requirement of NEPA is that all federal agencies make an Independent environmental assessment of the proposed action. *Compare* 42 U.S.C. § 4332(2)(c)(1999) with *Save the Bay, Inc. v. United States Army Corps of Engineers*, 610 F.2d 322, 325 (5th Cir. 1980). For instance, if the National Oceanographic and Aeronautical Administration (“NOAA”) or the National Park Service were accorded deference, it may well be that NEPA would be more readily adhered to on the nearshore coral reefs or the Appalachian trail. That is an example of the deference expected by federal Courts. Likewise, an organization with a cloudy past on environmental matters—like the U.S. Army Corps of Engineers—can not be deferred to with a nod and a wink, all-the-while knowing that the Corps indifference to the environment can be expected to reinforce industry preferences for

not complying with NEPA. Such an FCC practice would violate the "independent environmental assessment" expected by federal courts.

Properly administered in light of federal Agency deference under the requirement for "independent environmental assessment", NEPA would arguably require the FCC to prepare a comprehensive, programmatic, EIS addressing the cumulative visual and aesthetic impacts of technologies on sensitive ecosystems like the Appalachian trail and the nearshore coral reefs of the Caribbean. See, e.g., *Foundation on Economic Trends v. Lyng*, 817 F.2d 882 (D.C. Cir. 1987); *National Wildlife Fed'n v. Benn*, 491 F. Supp. 1234, 1251 (S.D. N.Y. 1980); *National Resources Defense Council v. Hodel*, 435 F. Supp. 590, 598-602 (D. Or. 1977), *aff'd sub nom.*, *National Resources Defense Council v. Munro*, 626 F.2d 134 (9th Cir. 1980). A comprehensive EIS would prove valuable and necessary; through an EIS, the FCC could analyze the visual, aesthetic, and environmental impacts of the telecommunications network across the nearshore coral reefs and along the Appalachian trail.²⁰ In addition, NEPA would also require the FCC to engage in site-specific EISs regarding the localized environmental effects of each individual tower and each nearshore coral reef breeching. See *Kleppe v. Sierra Club*, 427 U.S. 390 (1976).

The site-specific EISs would enable the FCC, NPS, NOAA and local governmental agencies to engage in a micro-level analysis of siting determinations and explore ways to minimize local impacts of fiber optic cables and telecommunications towers. To avoid repetitious analysis and to maximize efficiency, the FCC could "tier" its NEPA analysis so that the broader programmatic analysis could be incorporated by reference into later, more site-specific EISs. See 40 C.F.R. 1508.28 (1999), which states that

[t]iering' refers to the coverage of general matters in broader environmental impact statements . . . with subsequent narrower statements or environmental analyses . . . incorporating by reference the general discussions and concentrating solely on the

²⁰See James J. Vinch, *The Telecommunications Act of 1996 and Viewshed Protection for the National Scenic Trails*, 15 J. LAND USE & ENVTL. LAW 93, 140-141 (1999) citing Jon C. Cooper, *Broad Programmatic, Policy and Planning Assessments Under the National Environmental Policy Act and Similar Devices: A Quiet Revolution in an Approach to Environmental Considerations*, 11 Pace Env'tl. L. Rev. 89 (1993).

issues specific to the statement subsequently prepared.

See also 40 C.F.R. § 1502.20; *Muckleshoot Indian Tribe v. U.S. Forest Service*, 177 F.3d 800, 810 (9th Cir. 1999); *No GWEN Alliance, Inc. v. Aldridge*, 855 F.2d 1380 (9th Cir. 1988) (The U.S. Air Force issued generic environmental assessment for an entire network of radio towers and a site specific environmental assessment for each particular tower location). Such a tiering is supported by some of the industry commentators, and could be based on the “public” v. “private” utility distinction advanced by the *PEER Petition*. Compare *PEER Petition* at 6-9 with *In Re Petition for Rulemaking of Public Employees for Environmental Responsibility, Comments of Tycom Networks (US), Inc.* (RM-9913)(Aug. 15, 2000) at 8. The complex nature of tiering is exhibit by *PEER* and *Tycom*’s differing stances on the legality of the concept. Such legitimate disagreements can only be resolved through extensive discussion and reflection by contending parties. Rulemaking is one activity that promotes such rigor.

CONCLUSION

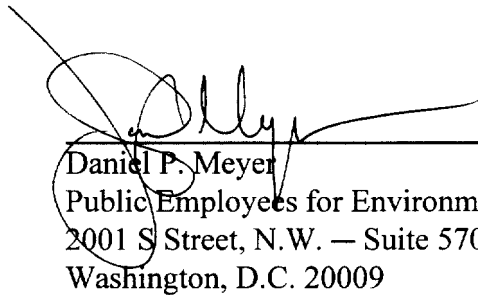
The defensive proposition that we are too far into the telecommunications revolution and have invested too much in infrastructure to change our fallen ways is just that: a statement backed by not a single citation of law. Indeed, the American courts "are committed to the proposition that when a major [F]ederal action is undertaken, no part may be constructed without an EIS. *Maryland Conservation Council, Inc. v. Gilchrist*, 808 F.2d 1039 at 10 [LEXIS pagination]. This judicial principal exists in order to prevent federal Agencies from placing themselves in precisely the circumstance in which the FCC now finds itself. Lumbering under environmental rules designed for a status quo ante revolution, the Commission now finds itself lacking in fidelity to the NEPA. Industry has acknowledged the need to redress the failings of the Commission environmental rules.²¹

Indeed, no better contrast in the changing nature of our regulated activity is available than in a comparison of Tycom Networks (US), Inc's *Comments* with the record PEER has compiled of environmental violations in the U.S. Virgin Islands, the comments of Reefkeeper International on the sensitivity of the Florida reefs, and the now-environmentally incorrect statement Tycom cites to from 1974. At one time, we thought DDT was a life-saving elixir, that Agent Orange was the solution to a just war, and that thalidimide was good for a baby's health. Compare the Clinton Administration's record on coral reef preservation with the statement cited by Tycom and one sees why the categorical exclusion for submarine cable landing licenses needs to go the way of that other oddity of 1974, the Mood Ring.²²

²¹In Re Petition for Rulemaking of Public Employees for Environmental Responsibility, *WorldCom Comments* (RM-9913)(Aug. 14, 2000) at 3.

²²*Compare* In Re Petition for Rulemaking of Public Employees for Environmental Responsibility, *Comments of Tycom Networks (US), Inc.* (RM-9913)(Aug. 15, 2000) at 4 with Reefkeeper International, Letter in Support i.c.o. PEER Petition, RM-9913 (Sept. 1, 2000).

The correction will be painful, and costly, but the law is not administered to some, and not others, simple because it costs. One is not permitted to chose between compliance with the Telecommunications Act of 1996 and the National Environmental Policy Act of 1969. The salutary effects of "competition" are understood but they need not be advanced to the detriment of the environmental policy goals of the United States Government. PEER believes that timely action by all parties hereby petitioned can bring the FCC and the telecommunications industry into compliance with the law. A rulemaking is required to save the reefs, and PEER repetitions so.



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Public Employees for Environmental Responsibility (PEER)
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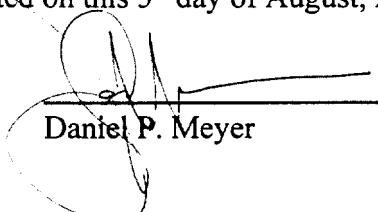
Tele: (202) 265.7337
District of Columbia Bar No. 455369

Its General Counsel and Attorney

March 17, 2000

CERTIFICATE OF SERVICE

I—Daniel P. Meyer—do hereby certify that duplicates of the forgoing Reply of Public Employees for Environmental Responsibility ("PEER") have been served upon the persons listed below via first class mail delivery or as otherwise indicated on this 5th day of August, 2000.


Daniel P. Meyer

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Federal Communications Commission
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Exhibit I

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Environmental violations cost AT&T \$100,000 fine

By CHRIS LARSON
Daily News Staff

ST. THOMAS — AT&T has received a \$100,000 fine for constructing an illegal breakwater in Magens Bay, just off the Peterborg Peninsula.

The fine was levied by the Department of Planning and Natural Resources' Coastal Zone Management division. CZM Director Janice Hodge said the breakwater was illegally erected as

part of an AT&T maintenance project on some phone lines in the area, not far from the "St. Thomas White House," the private residence where President Clinton stayed on his visits here.

"They were supposed to do maintenance and not any additional work," Hodge said. "But they did more than maintenance."

Hodge said AT&T had the proper permits for the maintenance work but not for building a breakwater.

AT&T officials did not return calls seeking comment.

"We don't think any sea life was damaged," Hodge said. "But we have concerns about sand movement along the beach where they erected the wall."

DPNR Commissioner Dean Plaskett issued a Notice of Violation Assessment earlier this month. The notice levied a fine of \$100,000 and requires AT&T to remove the breakwater.

The company is not required to

pay the fine or remove the breakwater until after a meeting it has requested with Plaskett. That hearing is tentatively scheduled for Sept. 6, Hodge said.

This is not the first time AT&T has been charged with environmental violations here. AT&T paid \$8 million to resolve a lawsuit and fines over a 1996 mud spill in St. Croix's Buller Bay that killed some conch and damaged a coral reef.

The V.I. government received the bulk of that money late last year.

The Virgin Islands

Daily News

A Pulitzer Prize-winning newspaper

DPNR fines AT&T \$100,000

Exhibit II

**GOVERNMENT OF THE VIRGIN ISLANDS OF THE UNITED STATES**

-----0-----

DEPARTMENT OF PLANNING AND NATURAL RESOURCES

Division of Coastal Zone Management
Cyril E. King Airport, Terminal Building Second Floor
St. Thomas, Virgin Islands 00802

Fax: (340) 775-5706

Tel: (340) 774-3320

August 28, 2000

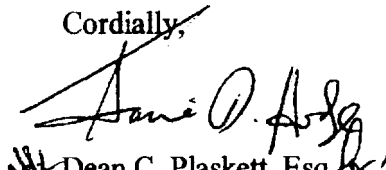
Mr. Dan Meyer
General Manager
Public Employees for Environmental Responsibility
2001 S Street, NW
Suite 70
Washington, D.C 20009

via Facsimile (202) 265-4192

Dear Mr. Meyer:

This will acknowledge receipt of your August 25, 2000-letter regarding the AT&T of the Virgin Islands violation. As you requested, I have enclosed a copy of the Notice of Violation and Assessment of Penalty (NOVA) which was issued to AT&T of the Virgin Islands on August 2, 2000.

Cordially,


Janice D. Hodge
Commissioner

Pc: Janice D. Hodge, CZM Director
File

Czm-30.00w

**GOVERNMENT OF THE VIRGIN ISLANDS
BEFORE THE DEPARTMENT OF PLANNING AND NATURAL RESOURCES
DIVISION OF COASTAL ZONE MANAGEMENT**

**DEPARTMENT OF PLANNING AND
NATURAL RESOURCES
COMMISSIONER DEAN C. PLASKETT, ESQ.**

NOVA-05-00-STT

**NOTICE OF VIOLATION AND ASSESSMENT
NOTICE OF ASSESSMENT OF
ORDER FOR CORRECTIVE ACTION
CIVIL PENALTY
NOTICE OF OPPORTUNITY FOR HEARING**

COMPLAINANT.

VS

AT & T of the VIRGIN ISLANDS, INC.

RESPONDENT.

PROCEEDING UNDER V.I. Code tit.12, section 913(6) OF THE COASTAL ZONE MANAGEMENT ACT.

I. AUTHORITY

Consistent with the policy of the United States Virgin Islands, as declared in V.I. Code tit. 12, section 903(b)(1), to protect, maintain, preserve and where feasible, enhance and restore, the overall quality of the environment in the coastal zone, the natural and man-made resources therein, and the scenic and historic resources of the coastal zone for the benefit of residents and visitors of the Virgin Islands, the Commissioner of the Department of Planning and Natural Resources issues this NOTICE OF VIOLATION AND ASSESSMENT, NOTICE OF ASSESSMENT OF CIVIL PENALTY, ORDER FOR CORRECTIVE ACTION, NOTICE OF OPPORTUNITY FOR HEARING, in accordance with the authority conferred upon him by V.I. Code tit.12, 913(b)(6).

II. FINDINGS OF FACT

1. On Wednesday, July 19, 2000, CZM Director, Janice Hodge and Inspectors Howard, Petersen and Oriol (CZM staff) visited the AT&T site at plots #2,3, & 4 Est. Peterborg based on a report from the Army Corps of Engineers, and found erected on the shoreline: one large stone breakwater approximately one hundred (100') feet long by thirty-five (35') feet wide constructed parallel to the beach, and two rock groins of near similar dimensions extending from the edge of the slope of the hillside into the bay.
2. Coastal Zone Management Division files show that AT&T of the Virgin Islands, Inc. was issued Minor Coastal Zone Management Permit (CZT-16-91W) in 1991.
3. CZT-16-91W allowed AT&T to install seven fiber optic underwater communication cables seaward of Parcels No. 2, 3 and 4, Estate Peterborg, St. Thomas.
5. In August of 1999, AT&T requested permission to repair the ocean ground connection which services the six underwater fiber optic cables which were installed and authorized under CZT-16-91W.

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August 1, 2000

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6. On August 25, 1999, in a letter addressed to Dexter Freeman, Commissioner Dean C. Plaskett, Esq. granted AT&T permission to repair its ocean ground connection.
7. Commissioner Plaskett, conditioned the August 25-letter to exclude any additional work on the site.

III. STATEMENT OF LAW
(Coastal Zone Management Act)

1. Virgin Islands Code tit.12, section 902(v) provides:

"Person" means any individual, organization, partnership, association, corporation or other entity, including any utility, the Government of the Virgin Islands, the Government of the United States, any department, agency, board, authority or commission of such governments, including specifically the Virgin Islands Port Authority and the Virgin Islands Water and Power Authority, and any officer or governing or managing body of any of the foregoing.

2. Section 902(u) provides:

"Permit" means any license, certificate, approval, or other entitlement for use granted or denied by any public agency.

3. Section 902(r) states:

"First Tier" means that area extending landward from the outer limit of the territorial sea, including all offshore islands and cays, to distances inland as specified in the maps incorporated by reference in section 908, subsection (a) of this chapter.

4. Section 910(a) provides:

On or after the effective date of this chapter, any person wishing to perform or undertake any development in the first tier of the coastal zone, except as provided in subsection (b) of this section, shall obtain a coastal zone permit in addition to obtaining any other permit required by law from any public agency prior to performing or undertaking any development.

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August 1, 2000

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5. Section 902(L) states:

"Development" means the placement, erection, or removal of any fill, solid material or structure on land, in or under the water; discharge or disposal of any dredged material or of any liquid or solid waste; grading, removing, dredging, mining, or extraction of any materials, including mineral resources; subdivision of land pursuant to Title 29, chapter 3, of this Code; construction, reconstruction, removal, demolition or alteration of the size of any structure; or removal or harvesting of vegetation, including coral.

Development shall not be defined or interpreted to include activities related to or undertaken in conjunction with the cultivation, use or subdivision of land for agricultural purposes which do not disturb the coastal waters or sea, or any improvements made in the interior of any structure.

6. Section 913(b) (6) states:

When the Commission or Commissioner has reason to believe that any person has undertaken, or is threatening to undertake, any activity that may require a coastal zone permit without securing a coastal zone permit, or that may be inconsistent with any coastal zone permit previously issued, the Commission or Commissioner may issue a written order directing such person to cease and desist. The cease and desist order shall state the reasons for the Commission's or Commissioner's decision and may be subject to such terms and conditions as the Commission or Commissioner deems necessary to ensure compliance with the provisions of this chapter including, without limitation, immediate removal of any fill or other material, suspension of the coastal zone permit, or the setting of a schedule within which steps must be taken to obtain a coastal zone permit pursuant to this chapter....

7. Section 913(c) (1) provides:

Any person who violates any provision of this chapter, or any regulation or order issued hereunder, shall be subject to a civil fine of not to exceed ten thousand (\$10,000) dollars.

8. Section 913(c) (2) provides:

Any violation of this chapter or any regulation or order issued hereunder shall constitute a misdemeanor.

9. Section 913(c) (3) provides:

In addition to the foregoing and in order to deter further violations of the provisions of this chapter, the . . . Commissioner may maintain an action of exemplary damages, the

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August 1, 2000

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amount of which is left to the discretion of the court, against any person who has . . . knowingly violated any provisions of this chapter.

10. Section 903(a)(1) provides:

The Legislature finds and declares that the coastal zone, and the lands and waters thereof, constitute a distinct and valuable natural resource of vital importance to the people and economy of the United States Virgin Islands.

IV. CONCLUSIONS OF LAW

1. The Commissioner is authorized to bring this enforcement action and issue this Notice of Violation and Assessment of Penalties and Order for Corrective Action, pursuant to V.I. Code tit 12, section 913.
2. The Respondent is a person within the meaning of V.I. Code, tit.12, section 902 (v).
3. The activity complained of occurred in the first tier as defined by V.I. Code, tit. 12, section 902(r).
4. Erecting a stone breakwater wall and two rock groins constitutes development pursuant to V.I. Code tit. 12, section 902(L).
5. Erecting a stone breakwater wall and two rock groins without first securing a coastal zone management permit is inconsistent with V.I. Code tit. 12, sections 910 and 911.
6. AT&T of the Virgin Islands, Inc. is subject to civil and criminal penalties, pursuant to V.I. Code tit.12, section 913(c).

V. DETERMINATION

The Commissioner has determined that the Respondent's action, erecting a stone breakwater wall and two rock groins, is inconsistent with the activities permitted under CZT-16-91W and the August 25,1999, Permission to Repair Letter and therefore, is in violation of V.I. Code, tit. 12, section 910(a)(1).

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August 1, 2000

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VI. ORDER

In consideration of the foregoing findings of fact and conclusions of law, the Respondent is hereby **ORDERED** to:

- (a) Remove the erected structures: stone breakwater wall and two rock groins within thirty (30) days receipt of this NOVA.

Failure to comply with the Ordered Provision as stated in this Order constitutes a violation of the Order, and will subject the Respondent to further enforcement actions.

VII. NOTICE OF PENALTY ASSESSMENT

Pursuant to V.I. Code tit. 12, section 913, the Respondent, AT&T is hereby **ORDERED** to pay a civil penalty fine in the amount of ONE HUNDRED THOUSAND DOLLARS (\$100,000.00) within thirty (30) days receipt of this NOVA.

VIII. OPPORTUNITY TO REQUEST A HEARING

Respondent has (30) thirty days to accept the penalty by taking the actions specified in the NOVA. Pursuant to V.I.R. & REGS. Section 913-3 (g)(2), respondent may seek to have the NOVA Amended, Modified or Rescinded. The respondent may also request an extension of time pursuant to V.I.R. & REGS., tit. 12, section 913 (g) (3) or request an informal settlement conference pursuant to Department of Planning and Natural Resources internal policies.

IX. CAVEAT

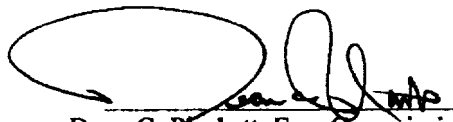
Failure to comply with any terms of this Order will subject you to additional enforcement action. Compliance with the terms of this Order does not constitute a waiver of your responsibility to comply with all other applicable territorial and federal laws and regulations.

X. CONTACT

Should you have further questions, please contact Julita de Leon, Legal Counsel, Division of Coastal Zone Management at 774-3320.

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August 1, 2000
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SO ORDERED THIS 2nd DAY OF August, 2000.



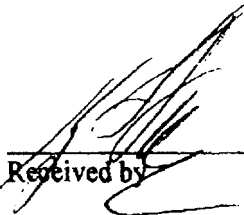
Dean C. Plaskett, Esq. Commissioner
Department of Planning and Natural Resources

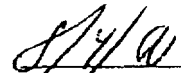
Cc: St. Thomas CZM Committee
Janice Hodge, CZM Director
Julita de Leon, CZM Legal Counsel

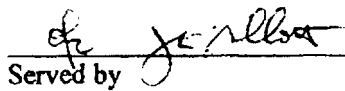
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AT&T -NOVA-05-00-STT
August 1, 2000
Page -7-

ACKNOWLEDGMENT RECEIPT


Received by _____


Date _____


Served by _____

08-04-00
Date

Government of the Virgin Islands
Department of Planning & Natural Resources
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LEGAL COUNSEL OFFICE
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FAX TRANSMISSION

DATE: 8/28

NUMBER OF PAGES (INCLUDING COVER SHEET): 9

TO:

NAME: Mr. Dan Meyer

LOCATION: PEER, D.C.

PHONE# 202-265-4192 **FAX#** 202-266-4192

FROM:

NAME: Julita de Leon / Dean C Plaskett.

COMMENTS: Re: NOAA for AT&T

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IN THE DISTRICT COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. CROIX

Government of the Virgin Islands,)
Department of Planning and Natural Resources, and)
Beulah Dalmida-Smith, in her capacity as Commissioner)
of Planning and Natural Resources, and as Trustee for)
Natural Resources of the Territory of the United States)
Virgin Islands,)

Plaintiffs,)

vs.)

AT&T Corp., AT&T of the Virgin Islands, Inc.,)
AT&T Submarine Systems, Inc., A&L Underground, Inc.,)
Alex Lowe, individually and in his capacity as President of)
A&L Underground, Inc., AT&T Global Design Organization,)
Inc., Barry Florence, individually and in his capacity as)
former President and CEO of AT&T of the Virgin Islands, Inc.,)
BioImpact, Inc., and Submarine Systems International Ltd.)
and Tyco Submarine Systems Ltd., as successors in interest to)
AT&T Submarine Systems, Inc.,)

Defendants.)

CIVIL NO. 1997/142

ACTION FOR PENALTIES,
DAMAGES AND INJUNCTIVE
RELIEF

JURY TRIAL DEMANDED

FIRST AMENDED COMPLAINT

Plaintiffs, Government of the Virgin Islands, Department of Planning and Natural Resources, and Beulah Dalmida-Smith, as Commissioner of Planning and Natural Resources, and in her capacity as Trustee for Natural Resources of the Territory of the United States Virgin Islands, by and through their undersigned counsel, complain against AT&T Corp., AT&T of the Virgin Islands, Inc. ("AT&TVI"), AT&T Submarine Systems, Inc. ("AT&TSSI"), A&L Underground, Inc. ("A&L"), Alex Lowe, individually and in his capacity as President of A&L,

AT&T Global Design Organization, Inc. ("AT&T Global"), Barry Florence, individually and in his capacity as former President and CEO of AT&TVI, BioImpact, Inc. ("BioImpact"), and Submarine Systems International Ltd. ("Submarine International") and Tyco Submarine Systems Ltd. ("Tyco") as successors in interest to AT&TSSI, hereinafter referred to as the "Defendants," and allege as follows:

INTRODUCTION

1. This action is brought to redress the harm to the environment, marine life, and the public health and welfare of the people of the United States Virgin Islands resulting from Defendants' acts and omissions.

2. This civil action arises under the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. §§6901-6992k, the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA") 42 U.S.C. §9601 *et seq.*, the Virgin Islands Clean Water Act ("CWA"), 12 V.I.C. §181 *et seq.*, the Racketeer Influenced and Corrupt Organizations Act (RICO), 18 U.S.C. §1961 *et seq.*, the Criminally Influenced and Corrupt Organizations Act, 14 V.I.C. §600 *et seq.*, the Virgin Islands Coastal Zone Management Act ("CZMA"), 12 V.I.C. §901 *et seq.*, and common law.

3. Defendants have, *inter alia*, unlawfully released and discharged tens of thousands of gallons of drilling mud containing hazardous substances into the Territorial seas of the U.S. Virgin Islands, and onto the sea floor.

4. Defendants unlawfully laid cable on the sea floor and across a pristine coral reef in Virgin Islands Territorial waters.

5. Defendants unlawfully allowed and facilitated the flow of massive quantities of dirt, soil, drilling mud, and other debris, from the AT&T shoreside property, into the Territorial waters of the U.S. Virgin Islands.

PARTIES

THE PLAINTIFFS

12. Plaintiff Government of the Virgin Islands ("GVI") is a sovereign entity that manages and controls the natural resources within its boundaries, including air, land and water resources, for the benefit of its citizens. It holds such natural resources in trust for the benefit of all of its citizens.

13. Plaintiff Virgin Islands Department of Planning and Natural Resources ("DPNR") is an Executive Department of the Government of the Virgin Islands, established by 3 V.I.C. §400, and charged by 3 V.I.C. §401 with the duty and power, *inter alia*, to administer and enforce all laws pertaining to water pollution and environmental protection.

14. Plaintiff Beulah Dalmida-Smith, is Commissioner of the Department of Planning and Natural Resources, and was appointed by the Governor of the Virgin Islands as Trustee for Natural Resources of the Territory of the United States Virgin Islands, pursuant to 42 U.S.C. §9607(f)(2), on December 2, 1996.

THE DEFENDANTS

15. AT&TVI is incorporated in Delaware, registered to do business in the U.S. Virgin Islands, and was the Permittee for permits numbered CZT-16-91W, CZX-27-94L and CZX-28-94W.

16. AT&T Corp. is incorporated in New York and does business in the U.S. Virgin Islands. AT&T Corp., through its International Operations Division, planned the construction of a Cable Landing Facility on St. Croix, U.S. Virgin Islands. AT&T Corp. entered into a contract with BioImpact for BioImpact to provide, *inter alia*, the environmental monitoring required by permits numbered CZX-27-94L and CZX-28-94W.

22. Barry L. Florence was at all relevant times the President and Chief Executive Officer of AT&TVI. He had the authority and responsibility to ensure that the operations associated with the drilling and construction of the AT&T project, including cable laying, complied with Territorial and Federal environmental laws. He had the authority and responsibility to stop and/or modify all operations and activities associated with the drilling mud and construction of the AT&T project, including cable laying at the site. On information and belief, Mr. Florence had knowledge of the permit conditions and problems at the site. Mr. Florence visited the site.

FACTS

Site History

23. On November 20, 1963, pursuant to 48 U.S.C. §1704 *et. seq.*, tidelands, submerged lands and filled lands were conveyed to the Government of the Virgin Islands by the United States of America for the land to be "administered in trust for the benefit of the people of the Virgin Islands." 48 U.S.C. §1705(a) (Supp. 1986).

24. Prior to AT&T's initiation of the acts and omissions that are the subject of this complaint, the marine waters and seabed fronting AT&T's fiber optic cable facility at Butler Bay, St. Croix, were characterized by clear waters, a healthy and diverse community of seagrass beds, algae, sponges, conch, hard and soft corals, and a seabed uncontaminated by drilling mud.

25. According to the United States Fish & Wildlife Service, seagrass beds and coral reefs are "special aquatic sites" considered "aquatic resources of national importance."

26. As a part of efforts to create an operational fiber optic cable facility on St. Croix, drilling occurred. The manner in which this drilling occurred was unauthorized and unlawful.

27. The unlawful, unauthorized drilling and the releases, discharges, and disposal of massive quantities of toxic drilling mud into the Territorial marine waters did cause and continues to cause substantial and irreparable injury to the marine life and the marine environment, including, but not limited to, the coral reef, reef organisms, conch, and other natural resources of the Virgin Islands.

28. The Defendants' failure to prevent the introduction of massive quantities of sediment into Territorial waters did cause, and continues to cause, substantial injury to the marine environment including, but not limited to, the coral reef, reef organisms, conch, and other natural resources in the Virgin Islands Territorial waters.

29. The Defendants' unlawful and unauthorized cable laying did cause, and continues to cause, substantial and irreparable injury to the marine environment including, but not limited to, the coral reef, reef organisms, and other natural resources in the Virgin Islands Territorial waters.

Permitting History for Offshore Development

30. On June 3, 1994, by cover letter and attached application form, AT&TVI applied to GVI for a Coastal Zone Permit to develop a Submarine Cable Landing Facility on Plot #4-A Estate Northside, St. Croix, U.S. Virgin Islands ("AT&T's Cable Landing Facility"). The application requested development of a 16,000 sq. ft. building and a 2000 sq. ft. residence on the uplands and "the directional drilling of eight (8) submarine cable conduits 1000 ft. offshore to a depth of 45 ft."

31. In the application for Permit CZX 28-94W, AT&TVI was identified as the applicant and the landowner and, alternatively, the holder of an option for the land at issue, and the application was verified by the president of AT&TVI.

32. In the application for Permit CZX 28-94W, AT&TSSI was identified as the developer.

33. In the application for Permit CZX 28-94W, AT&T Global was designated as the project designer.

34. AT&TVI's permit application made, among other things, the following statements and representations in a three page handwritten form included in the application:

- a) "[a] water quality monitoring program will be implemented to monitor drilling muds;"
- b) "[d]irectional drilling is being employed to protect the shallow near shore coral reef;"
- c) "[t]he alternative chosen is the most ecologically sensitive to the marine environment;" and
- d) "directional drilling will eliminate impacts to the near-shore reef . . ."

35. On August 29, 1994, the Division of Environmental Protection ("DEP") of DPNR reviewed AT&TVI's CZM Permit Application and "conditionally approved" a Water Quality Certification ("WQC").

36. AT&TVI, as a part of the permitting process, submitted a Water Quality Monitoring Plan. The Plan made the following statements and representations:

- a) "When there is a breakthrough the pressure on the mud immediately drops and the pumps will be cut off."
- b) "The drilling mud will be vacuumed up once the drilling for that conduit is completed."